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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91162370
Party	Defendant De Beers LV Ltd
Correspondence Address	Darren W. Saunders Hiscock & Barclay, LLP Seven Times Square New York, NY 10036 UNITED STATES DSaunders@hblaw.com
Submission	Reply in Support of Motion
Filer's Name	Darren W. Saunders
Filer's e-mail	dsaunders@hblaw.com, rpowell@hblaw.com, apatel@hblaw.com, trademarks@hblaw.com
Signature	/Darren. Saunders/
Date	04/01/2009
Attachments	Reply Brief - DB.pdf (27 pages)(788212 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DE BOULLE DIAMOND & JEWELRY, INC.,

Opposer,

v.

DE BEERS LV LTD.,

Applicant.

Consolidated Opposition No.: 91162370

Opposition No.'s: 91162370
91164615

**REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTION TO EXTEND APPLICANT'S
TESTIMONY PERIOD**

Applicant De Beers Diamond Jewellers, Ltd. (formerly De Beers LV Ltd.) ("De Beers") hereby submits this reply brief in support of Motion to Extend Applicant's Testimony Period.

I. Preliminary Statement

It is unfortunate that De Beers has been forced to make this motion and take the extraordinary step of obtaining a federal district court order permitting substituted service of a subpoena on Denis Boulle, the CEO of Opposer De Boulle Diamond & Jewelry, Inc. ("De Boulle"). As the CEO of Opposer, it is expected that Mr. Boulle would comply with the applicable rules of procedure and cooperate with Applicant in scheduling testimony depositions. Instead, Mr. Boulle has purposely evaded service of the subpoena causing yet additional delay, inconvenience and expense to Applicant.

Compounding the situation, Opposer makes blatant misstatements to the Board in its response to De Beers' motion. For example, Opposer contends that De Beers has not attempted to bring an enforcement action based on the subpoena in the United States District Court for the

Northern District of Texas. (De Boulle Br. at 6). On the contrary, De Beers initiated a miscellaneous action in the District Court on March 18, 2009. (*See* Exhibit A hereto). Indeed, a hearing was held on March 31, 2009 in the District Court. The presiding Judge, Magistrate Judge Stickney, granted De Beers' motion and ordered substituted service of the subpoena on Mr. Boulle. (*See* Order, Exhibit B hereto).

Accordingly, De Beers respectfully requests that this motion be granted and that the Board reset De Beers' testimony period such that the proceeding may be resumed.

II. Argument

The arguments advanced by Opposer in its response to De Beers' motion to extend its testimony period are each devoid of merit. De Boulle claims: (1) that De Beers has allegedly not acted diligently to procure Mr. Boulle's testimony; (2) that De Beers is allegedly requesting that the Board enforce the subpoena; and (3) that Mr. Boulle allegedly was not evading service of the subpoena and therefore that Opposer has allegedly not acted in bad faith.

A. De Beers Acted Diligently

On page 2 of De Boulle's response brief, Opposer neglects to mention that the parties had been engaged in serious settlement discussions over the six months following the conclusion of Mr. Boulle's direct testimony on July 9, 2008. In January of 2009, once it became apparent that settlement would not occur, De Beers advised Opposer that it would need to continue defending the proceeding.¹ At this time, De Beers was faced with the option of moving to extend the close of Opposer's testimony period in order to cross examine Mr. Boulle or to simply wait for Applicant's testimony period to open and examine Mr. Boulle at that time. De Beers chose the

¹ In order to streamline the proceeding going forward, on February 19, 2009, De Beers voluntarily abandoned four of the five applications involved herein.

latter option to avoid further motion practice and so as not to be limited to the subject matter of Mr. Boulle's testimony during De Boulle's direct examination. De Beers then provided written notice, *six weeks in advance*, to counsel for Opposer of its intention to take the testimony deposition of Mr. Boulle. (See Exhibit C). Further, once it became apparent that De Beers would need to seek a judicial order regarding service of the subpoena, it promptly, *within the first week of its testimony period*, brought this motion for an extension. Thus, De Beers was diligent with respect to the testimony of Mr. Boulle and in seeking an extension.²

B. De Beers properly sought enforcement of the subpoena with the United States District Court for the Northern District of Texas

Opposer contends that De Beers requested that the Board enforce the subpoena on Mr. Boulle. (De Boulle Br. at 5). De Beers never did so and it is unclear as to why Opposer makes this argument. Opposer's argument is especially puzzling since De Beers advised counsel for De Boulle in writing on February 4, 2009, well in advance of filing the miscellaneous action, that it will bring the matter to the attention of a federal district court judge if necessary. (See Exhibit E). In any event, De Beers followed the procedure required to obtain the relief it needed from the District Court.

C. Mr. Boulle's evasion of service of the subpoena constitutes bad faith conduct

In view of the evidence submitted by De Beers in support of this motion, including the Service Log of Mr. Merrell and the Affidavit of Diligence of Ms. Bigony, it is literally incredible that Opposer argues that Mr. Boulle has not been evading service of the subpoena. (De Boulle Br. at 6-8). Significantly, Opposer has been aware since January 2009 that De Beers intended to

² Opposer also states that De Beers "never served a Notice of its intention to take the testimony of any other witness..." during its testimony period. (De Boulle Br. at 4). Although not relevant to the motion, this statement is blatantly false, as De Beers did serve a notice of testimony deposition for a De Beers witness, on January 30, 2009. (See Exhibit D).

take the testimony deposition of Mr. Boulle. Since then, through De Beers' numerous attempts at service of the subpoena, as detailed in its motion, Mr. Boulle's wife, housekeeper, and employees at his store each received actual notice of De Beers' attempts to serve the subpoena. Under these circumstances, it is undeniable that Mr. Boulle has been evading service of the subpoena purposefully, constituting bad faith on the part of Opposer.³

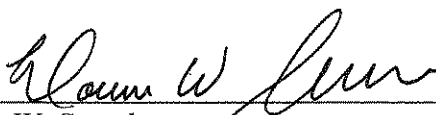
III. Conclusion

For the reasons expressed herein, De Beers requests that its motion be granted and that the Board reset the remaining testimony periods, for such dates to allow sufficient lead time to make necessary travel arrangements to Dallas, and to reset the previously noticed testimony deposition of the De Beers witness, Hamida Belkadi, in New York.

Respectfully submitted,

DE BEERS DIAMOND JEWELLERS, LTD.
(formerly De Beers LV Ltd.)

DATED: April 1, 2009

By: 
Darren W. Saunders
Hiscock & Barclay, LLP
Seven Times Square
New York, NY 10036
P: 212.784.5800
F: 212.784.5777

Attorneys for Applicant

³ Opposer also erroneously contends that the subpoena "is issued on Mr. Boulle individually as a third-party witness and not in any capacity with De Boulle." (De Boulle Br. at 6). It appears that Opposer is confusing a discovery deposition with a testimony deposition. For a testimony deposition, the witness must be individually named. See 37 CFR §2.123(c). Unlike in a discovery deposition, a corporate entity cannot be "called as a witness" to give testimony in a TTAB proceeding. Thus, Opposer is incorrect, as Mr. Boulle was not being, and will not be, subpoenaed as a "third-party witness" but rather as a party witness.

Certificate of Service

I hereby certify that on this 1st day of April 2009 I served the foregoing REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTION TO EXTEND APPLICANT'S TESTIMONY PERIOD by first class and electronic mail to:

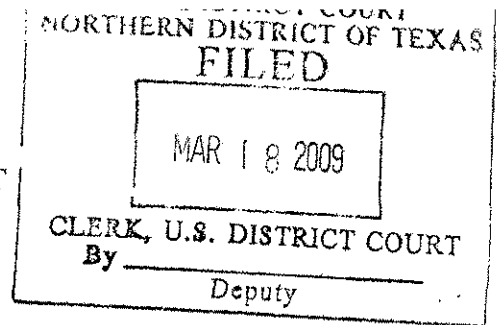
Dennis Griggs, Esq.
Griggs Bergen LLP
17950 Preston Road, Suite 1000
Dallas, Texas 75252



Rebecca Powell

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



De Beers Diamond Jewellers, Ltd.,
Plaintiff,

v.

Denis J. Boulle,
Defendant.

§
§
§
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United States Patent and Trademark Office
Trademark Trial and Appeal Board
Consolidated Opposition No.: 91162370

3-09MC0027-N

MISC. ACTION NO. _____

**MISCELLANEOUS ACTION:
MOTION FOR SUBSTITUTED SERVICE OF SUBPOENA
FOR DEPOSITION OF DENIS J. BOULLE AND BRIEF IN SUPPORT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff De Beers Diamond Jewellers, Ltd. f/k/a De Beers LV Ltd. ("De Beers") files this Miscellaneous Action: Motion for Substituted Service of Subpoena for Deposition of Denis J. Boulle under Rule 45 Fed. R. Civ. P.¹

I. INTRODUCTION

This miscellaneous action arises out of a pending administrative proceeding before the Trademark Trial and Appeal Board ("TTAB") in the United States Patent and Trademark Office ("PTO"). In the proceeding, known as an opposition proceeding,² a Dallas based company, De Boulle Diamond and Jewelry, Inc. is opposing certain U.S. trademark applications filed by De Beers Diamond Jewellers, Ltd.

¹ Additionally, De Beers reserves its right to seek sanctions and/or an award for attorneys fees and costs in connection with the filing of this action.

² An opposition proceeding provides a means for a person who believes that he or she would be damaged by the registration of a trademark to oppose registration of the mark. See 15 U.S.C. § 1063. Opposition proceedings are governed by the Federal Rules of Civil Procedure. The party in the position of the plaintiff, known as the opposer, can present arguments to the TTAB to obtain an order refusing registration of a mark based on various grounds set forth in the Trademark Act of 1946, 15 U.S.C. § 1051 *et seq.* The rules for opposition proceedings are codified at 37 CFR. § 2.101 *et seq.*

This action and motion are necessitated by the intentional evasion of service of a subpoena on Denis J. Boulle, the CEO of De Boulle Diamond and Jewelry, Inc., for a deposition in the opposition proceeding. Despite diligent efforts by De Beers to serve the subpoena, including 27 attempts to serve Mr. Boulle at his residence and place of work by two different process servers over a period of three weeks, De Beers has been unable to serve the subpoena on Mr. Boulle. Significantly, Mr. Boulle is aware of the subpoena and of De Beers' numerous attempts to serve it, and notwithstanding this, and the fact that Mr. Boulle instituted the underlying opposition proceeding on behalf of his company, he has refused to accept service and has intentionally evaded De Beers' process servers. Accordingly, De Beers respectfully requests that this Court order that the subpoena may be served through such alternative means as permissible under Texas law.

II. FACTS

1. The Parties

Plaintiff, De Beers Diamond Jewellers, Ltd. is organized under the laws of the United Kingdom and is headquartered at 45 Old Bond Street, London W1S 4QT.

The Defendant, Denis J. Boulle is a resident of Texas and resides at 4024 Druid Lane, Dallas, Texas 75205. Mr. Boulle is the CEO of De Boulle Diamond & Jewelry, Inc., located at 6821 Preston Road, Dallas, Texas 75205.

2. Background

De Beers has long had a reputation as the world's leading supplier of high quality diamonds to the diamond and jewelry trade in the United States and throughout the world. (Declaration of Darren W. Saunders, paragraph 3 ("Saunders Dec., ¶ 3", App. at 001).) Recently De Beers entered into the retail diamond and jewelry business in the United States, having

opened its first store in New York in 2005. (Saunders Dec., ¶ 3, App. at 001.) Since the opening of its first retail store, De Beers has opened a number of other retail locations in select U.S. cities, including a store in Dallas in 2008. (Saunders Dec., ¶ 3, App. at 001.) In anticipation of opening these stores, in 2003 De Beers filed a number of trademark applications with the PTO to register various De Beers marks. (Saunders Dec., ¶ 4, App. at 001-002.) Subsequently, De Boule Diamond and Jewelry, Inc., which operates a single-location jewelry store in Dallas, filed opposition proceedings against registration of these marks,³ which were consolidated by the TTAB into a single proceeding. (Saunders Dec., ¶ 4, App. at 001-002.) This proceeding is ongoing.

3. Trademark Opposition Proceedings

An opposition proceeding is similar to a federal civil action in many respects. For example, it is commenced by filing a pleading (notice of opposition) which is the equivalent of a complaint; the parties may engage in all of the various means of discovery under the Federal Rules of Civil Procedure including depositions; and witnesses may testify in the proceeding. *See* 37 CFR § 2.116 (incorporating the Fed. R. Civ. P. “whatever applicable and appropriate.”) However, unlike federal court actions, there is no trial in an opposition proceeding. *See* 37 CFR § 2.116(d)-(e). Instead, witness testimony is taken by deposition during specified testimony periods and submitted to the TTAB in transcript form.⁴ *Id.* Thus, in opposition proceedings, a party may take both discovery depositions pursuant to Rule 30, Fed. R. Civ. P. *and* testimony depositions under the TTAB rules. Testimony depositions are akin to calling a witness to testify at trial in a federal action. *See* 37 CFR § 2.123.

³ The opposition proceeding is captioned *De Boule Diamond & Jewelry, Inc. v. De Beers LV Ltd.*, Consolidated Opposition No. 91162370. (Saunders Dec., ¶ 2 and 5, App. at 001 and 002.)

⁴ The TTAB schedules three testimony periods, one for the plaintiff to present its case-in-chief, one for the defendant, and one rebuttal period for the plaintiff. *See* 37 CFR § 2.121(b)(1).

One other difference between civil actions and opposition proceedings is pertinent here. Since the TTAB is a quasi-judicial authority that does not have the power to order or compel an unwilling witness to attend a deposition, attendance cannot be compelled by notice. Trademark Trial and Appeal Board Manual of Procedure, § 703.01 (2d ed. rev. 2004). Thus, to secure a witness' testimony in a TTAB proceeding, even if the witness is an officer of a party (as here), a subpoena issued from the judicial district where the witness resides or is regularly employed, pursuant to Rule 45, Fed. R. Civ. P., is required. *See* Trademark Trial and Appeal Board Manual of Procedure, § 703.01(f)(2) (2d ed. rev. 2004); 2 Handleman, J.A. Guide to TTAB Practice, § 17-12 (Aspen Pub. 2008). If a witness is unwilling to comply with the command of a subpoena (or for that matter refuses to accept service), the TTAB requires that a party must seek enforcement from the United States District Court issuing the subpoena. *Id.*

4. Facts Pertinent to This Motion

Prior to the commencement of De Beers' testimony period on February 13, 2009 and in full compliance with the trademark rules of practice of Rule 45, Fed R. Civ. P., De Beers caused to be issued a subpoena from this Court for the testimony deposition of Denis Boulle in the opposition proceeding. (Saunders Dec., ¶ 11, App. at 003.) De Beers' counsel inquired as to whether De Boulle's counsel in the opposition proceeding would accept service of the subpoena on Mr. Boulle's behalf. (Saunders Dec., ¶ 9 and January 15, 2009 letter to Dennis Griggs attached as Exhibit 1, App. at 003 and 005.) Counsel refused, and therefore De Beers retained a process server to serve the subpoena personally on Mr. Boulle. (*See* Subpoena of Denis Boulle attached as Exhibit 3 to Saunders Declaration, App. at 007-008.) De Beers also, in accordance

with Rule 45, provided notice to De Boulle's counsel.⁵ (See February 4, 2009 letter to Dennis Griggs attached as Exhibit 5 to Saunders Declaration, App. at 014-15).

The process server, Mr. Larry Merrell made 17 attempts to serve Mr. Boulle during a two week period from January 23, 2009 to February 5, 2009 at both Mr. Boulle's residence and place of work. (Process Service Log of Larry M. Merrell attached as Exhibit 4 to Saunders Declaration, App. at 009-013.) Although Mr. Merrell made these attempts at various times of the day and multiple times in a day, he was unable to effect service. (Saunders Dec., Ex. 4, App. at 009-013.) Significantly, Mr. Merrell spoke with Mr. Boulle's wife and housekeeper regarding the subpoena but was still unable to serve Mr. Boulle. (Saunders Dec., Ex. 4, App. at 009-013.)

Thereafter, De Beers' retained a second process server, Ms. Wendy Bigony, who made 10 attempts to serve Mr. Boulle from February 9, 2009 to February 16, 2009. (Affidavit of Diligence of Wendy Bigony, attached hereto as Exhibit 7 to Saunders Declaration, App. at 019-020.) Ms. Bigony made attempts at Mr. Boulle's work place and Mr. Boulle's residence at varying times of day, multiple times a day. (Saunders Dec., Ex. 7, App. at 019-020.) Ms. Bigony confirmed Mr. Boulle's vehicle was parked at his place of work or residence during at least five of the attempts made to personally serve him at that location. (Saunders Dec., Ex. 7, App. at 019-020.) In addition, Ms. Bigony spoke to Mr. Boulle's wife, Mr. Boulle's housekeeper, and personnel at De Boulle Diamond & Jewelry, Inc. to ascertain Mr. Boulle's whereabouts, but also was unable to personally serve Mr. Boulle. (Saunders Dec., Ex. 7, App. at 019-020.)

Clearly, Mr. Boulle has had actual knowledge that De Beers has been attempting to serve a subpoena on him for his testimony deposition, but he has been purposely evading service of the

⁵ De Beers completed its due diligence to verify Mr. Boulle's correct home residence by searching the Dallas Central Appraisal District's ("DCAD") online property ownership records. (See Search Results from DCAD attached as Exhibit 2 to Saunders Declaration, App. at 006).

subpoena. Indeed, any doubt that Mr. Boulle has had actual knowledge of De Beers' numerous attempts to serve the subpoena are completely removed by the fact that an attorney from Dallas calling on behalf of Mr. Boulle stated in a voicemail message to De Beers' counsel that Mr. Boulle is upset by the repeated visits of the process server and that he wants it to stop. (Saunders Dec., ¶ 15, App. at 004.) Furthermore, Mr. Boulle lives in a gated community and works in a store that has a locked entrance. (Saunders Dec., ¶ 14, App. at 004.) These barriers to actually reaching Mr. Boulle further demonstrate the impracticability and futility of personal service on Mr. Boulle. (Saunders Dec., ¶ 14, App. at 004.)

Accordingly, De Beers has no alternative but to bring this action and the present motion for an order authorizing an alternative means of service of the subpoena on Mr. Boulle to secure his attendance at a testimony deposition.⁶ See Trademark Trial and Appeal Board Manual of Procedure, § 703.01(f)(2) (2d ed. rev. 2004); 2 Handleman, J.A. Guide to TTAB Practice, § 17-12 (Aspen Pub. 2008). Specifically, De Beers respectfully requests that the Court order that the subpoena may be served by (1) leaving a copy of the subpoena with any individual above the age of sixteen (16) at Mr. Boulle's residence at 4024 Druid Lane, Dallas, Texas 75205 or office at 6821 Preston Road, Dallas, Texas 75205 or (2) by affixing a copy of the subpoena to the gate at the entrance of Mr. Boulle's residence at 4024 Druid Lane, Dallas, Texas 75205 or the main entrance at Mr. Boulle's office at 6821 Preston Road, Dallas, Texas 75205, with a copy by certified mail.

⁶ The opposition proceeding is currently in suspension by order of the TTAB in response to a motion for an extension of De Beers' testimony periods to provide it time to file this action and obtain relief from this Court. (Saunders Dec., ¶ 16, App. at 004.)

III. ARGUMENT

Substituted service is a concept generally contemplated by the Federal Rules of Civil Procedure in appropriate circumstances, such as in the present case. Federal Rule 4(e) provides, in relevant part, that service of an individual within a judicial district of the United States may be made by either (1) “following state law for serving a summons in an action brought in courts of general jurisdiction in the state whether the district court is located or where service is made” or (2)(B) “leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there”. FED. R. CIV. P. 4(e)(1), (2).

Similarly, substituted service is also recognized in the forum state’s procedural rules, here Texas Rule of Civil Procedure 106. Texas Rule 106 provides, in relevant part, that if a motion with supporting affidavit shows that personal service has been attempted but has not been successful, then the court may authorize substituted service, “by leaving a true copy of the citation, with copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit,” or other reasonably effective methods providing notice. TEX. R. CIV. P. 106(b).

No direct provision for alternative service is provided within the confines of Federal Rule 45. Rule 45(b) provides only that a subpoena requires “delivering a copy to the named person” by “any person who is at least 18 years old and not a party.” FED. R. CIV. P. 45(b)(1). However, when personal service has proved unsuccessful, federal courts have allowed subpoenas to be served by alternative methods of service. *See, e.g., King v. Crown Plastering Corp.*, 170 F.R.D. 355 (E.D.N.Y. 1997) (holding subpoenas duces tecum that were delivered both by hand and by mail to residence of husband and wife were sufficient, even though they were not personally

served with subpoenas); *Doe v. Herseemann*, 155 F.R.D. 630, 631 (N.D. Ind. 1994) (holding certified mail sufficient).⁷

In *Paul v. G.P.D.A., Inc.*, the Honorable Judge Godbey of the Northern District of Texas, Dallas Division, held that if substituted service was to be granted for a subpoena, the plaintiff must provide "evidence that personal service is 'impracticable or impossible,' or that 'notice will be given in a manner which is calculated to impart knowledge to the person who is to be notified.'" *Paul v. G.P.D.A., Inc.*, Civil Action No. 3:02-CV-0834, 2003 WL 25676996 (N.D. Tex. 2003) (unpublished) (citing *Sgitcovich v. Sgitcovich*, 150 Tex. 389, 241 W.2d 142, 146-47 (Tex. 1951)).

Though the standard cited in *Paul* requires a showing of either impracticability of service or that alternate service will impart knowledge, De Beers can make both showings to support its request for relief. In other words, the standard in *Paul* is clearly met. First, De Beers made 27 unsuccessful attempts upon Mr. Boulle at his home and office, many times with Mr. Boulle's vehicle parked outside the building at the time of the attempt, showing personal service is impracticable or impossible. (See Saunders Dec., Ex. 4 and 7, App. at 009-013 and 019-020.) Furthermore, because Mr. Boulle lives in a gated community and has a locked and protected store front, service on Mr. Boulle impossible. (Saunders Dec., ¶ 14, App. at 004.) Therefore, despite these diligent efforts, De Beers has been unable to serve the subpoena, requiring this Court's intervention. Second, De Beers requests relief in the form of substituted service by leaving a copy of the subpoena with any individual above the age of 18 at Mr. Boulle's residence and/or office or by affixing a copy of the subpoena to the main entrance of Mr. Boulle's residence and/or office, with copy by certified mail. Mr. Boulle's residence and place of

⁷ Indeed, the *Herseemann* Court held that personal service was not actually required by the plain language of Rule 45(b) – only "delivery" of a copy. *Herseemann*, 155 F.R.D. at 631.

business are locations calculated to provide him adequate notice. Last, and importantly, De Beers has and will again provide formal notice to De Boulle's counsel of the deposition in accordance with Rule 45, noting that Mr. Boulle is a principal of De Boulle. (*See Saunders Dec.*, Ex. 1, 3 and 5, App. at 005, 007-008 and 014-015.)

In sum, the circumstances presented herein demonstrate that the relief of substituted service is warranted. Service by the traditional method of personal delivery has become impracticable and impossible despite diligent efforts. Moreover, the requested substituted service is calculated to provide notice to Mr. Boulle in the manner most similar to personal service. Therefore, De Beers requests that the Court grant it permission to serve Mr. Boulle by (1) leaving a copy of the subpoena with any individual above the age of sixteen (16) at Mr. Boulle's residence at 4024 Druid Lane, Dallas, Texas 75205 or office at 6821 Preston Road, Dallas, Texas 75205 or (2) by affixing a copy of the subpoena to the gate at the entrance of Mr. Boulle's residence at 4024 Druid Lane, Dallas, Texas 75205 or the main entrance at Mr. Boulle's office at 6821 Preston Road, Dallas, Texas 75205, with a copy by certified mail.⁸

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, De Beers requests that this Court authorize substituted service upon Mr. Boulle in the manner outlined above, or in such other manner as this Court finds will be reasonably effective to give Mr. Boulle notice of the subpoena at mutually agreeable time and place that a true copy of this Court's Order for Substituted Service and Attendance be attached to and included with the subpoena to be served, and that this Court award to De Beers such other and further relief, legal or equitable, to which it shows itself to be justly entitled.

⁸ Again, De Beers additionally reserves its right to seek sanctions and/or an award for attorneys fees and costs in connection with the filing of this action.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

John M. Jackson

State Bar No. 24002340

Shannon M. Zmud

State Bar No. 24047169

Jackson Walker L.L.P.

901 Main Street, Suite 6000

Dallas, TX 75202

Telephone: (214) 953-6000

Fax: (214) 953-5822

E-mail: jjackson@jw.com

**ATTORNEYS FOR PLAINTIFF
DE BEERS DIAMOND JEWELLERS,
LTD.**

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2009, I have sent the document by certified mail, return receipt requested, to the following:

Denis J. Boulle
4024 Druid Lane
Dallas, TX 75205

Pieter J. Tredoux, Esq.
300 Park Avenue, Suite 1700
New York, New York 10022

Dennis Griggs, Esq.
17950 Preston Road, Suite 1000
Dallas, TX 75252

Mark Fahra, Esq.
6300 Bank of America Plaza
901 Main Street
Dallas, Texas 75202



John M. Jackson

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

De Beers Diamond Jewellers, Ltd.,	§	United States Patent and Trademark Office
<i>Plaintiff,</i>	§	Trademark Trial and Appeal Board
	§	Consolidated Opposition No.: 91162370
VS.	§	
	§	
	§	
Denis J. Boulle,	§	MISC. ACTION NO. 3:09-MC-00027-N-BF
<i>Defendant.</i>	§	

**ORDER GRANTING SUBSTITUTED SERVICE
OF SUBPOENA FOR DEPOSITION OF DENIS J. BOULLE**

BEFORE THE COURT is Plaintiff De Beers Diamond Jewellers, Ltd. f/k/a De Beers LV Ltd.'s ("Plaintiff") Motion for Substituted Service of Subpoena for Deposition of Denis J. Boulle and Brief in Support ("Motion"), which was filed with this Court on March 18, 2009.

Having considered Plaintiff's Motion and supporting Appendix, Defendant Denis J. Boulle's ("Defendant" or "Mr. Boulle") Response and supporting Appendix, Interested Third Party De Boulle Diamond & Jewelry, Inc.'s Response, and the arguments of counsel, the Court is of the opinion that Plaintiff's Motion is well taken and should be, in all respects, **GRANTED**. Furthermore, at the hearing on the Motion, Bruce Kaye, counsel for the Defendant, agreed to accept service of a re-issued subpoena on behalf of Mr. Boulle subject to any objections he has.

IT IS THEREFORE ORDERED that Plaintiff may serve Denis J. Boulle by serving a re-issued subpoena on Bruce Kaye, Denis J. Boulle's counsel, at 901 Main Street, Suite 6300, Dallas, Texas 75202 by facsimile at (866) 649-8757.

SIGNED this the 31st day of March 2009.

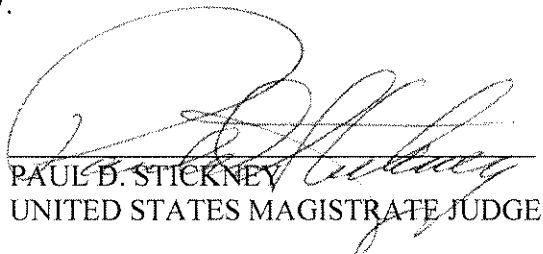

PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

DARREN W. SAUNDERS
PARTNER

SEVEN TIMES SQUARE
NEW YORK, NEW YORK 10036
T 212.784.5800 • F 212.784.5777

DIRECT DIAL 212.784.5805
DIRECT FAX 212.784.5787
DSAUNDERS@HBLAW.COM
ALSO ADMITTED IN: CONNECTICUT

January 15, 2009

VIA FAX 972.732.9218
VIA ELECTRONIC MAIL

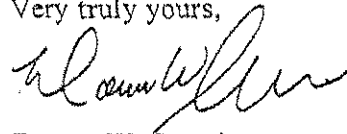
Dennis Griggs, Esq.
Griggs Bergen LLP
Preston Road at Frankford
Preston Plaza, Suite 1000
17950 Preston Road
Dallas, Texas 75252

Re: De Boulle Diamond & Jewelry, Inc. v. De Beers LV Ltd.
Consolidated Opposition No. 91162370

Dear Mr. Griggs:

Please let us know whether Mr. Denis Boulle will voluntarily agree to attend a testimony deposition in Dallas on March 3, 2009. In the event we do not receive written confirmation of Mr. Boulle's agreement by Tuesday, January 20, 2009 we shall serve a subpoena.

Very truly yours,



Darren W. Saunders

c: Pieter Tredoux (via email)

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DE BOULLE DIAMOND & JEWELRY, INC.,

Opposer,

v.

DE BEERS LV LTD.,

Applicant.

Consolidated Opposition No.: 91162370

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APPLICANT'S NOTICE OF TESTIMONY DEPOSITION

Please take notice that, pursuant to Trademark Rule 2.123, Applicant, De Beers LV Ltd., by its attorney, will take the testimony deposition upon oral examination of Hamida Belkadi, on March 13, 2009 at 9:30 a.m. at the office of Hiscock & Barclay, LLP, Seven Times Square, New York, New York 10036.

The deposition shall take place before a certified court reporter and shall continue until completed.

You are invited to attend and cross-examine.

DATED: January 30, 2009

By: 

Darren W. Saunders

Hiscock & Barclay, LLP

Seven Times Square

New York, NY 10036

P: 212.784.5800

F: 212.784.5777

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January 2009 I served the foregoing Applicant's Notice of Testimony Deposition by electronic and first class mail to Opposer's counsel as follows:

Dennis T. Griggs, Esq.
Griggs Bergen LLP
17950 Preston Road
Suite 1000
Dallas, Texas 75252



Rebecca Powell

EXHIBIT E

DARREN W. BAUNDERS
PARTNER

SEVEN TIMES SQUARE
NEW YORK, NEW YORK 10036
T 212.784.5800 • F 212.784.5777

DIRECT DIAL 212.784.5805
DIRECT FAX 212.784.5757
DWAUNDERS@HBLAW.COM
ALSO ADMITTED IN: CONNECTICUT

February 4, 2009

VIA UPS
VIA ELECTRONIC MAIL

Dennis Griggs, Esq.
Griggs Bergen LLP
Preston Road at Frankford
Preston Plaza, Suite 1000
17950 Preston Road
Dallas, Texas 75252

Re: De Boulle Diamond & Jewelry, Inc. v. De Beers LV Ltd.
Consolidated Opposition No. 91162370

Dear Mr. Griggs:

This concerns the testimony deposition of Denis Boulle.

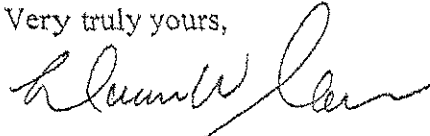
We are extremely disappointed that you did not honor our agreement to continue the deposition of Mr. Boulle so that he can be cross-examined. As I am sure you are aware, cross examination of a witness is a fundamental right in the United States jurisprudence and is a prerequisite to the admissibility of any testimony. It is particularly distressing that you chose to submit the Boulle testimony without the courtesy of contacting me to discuss how we should proceed, particularly in view of the inordinate amount of time taken in the questioning of the witness by two different attorneys, necessitating that we return for a second day in order to conduct cross-examination.

Regardless of the foregoing, De Beers has the absolute right under TTAB rules to call Mr. Boulle as a witness during its testimony period. We have been attempting over the past two weeks to serve Mr. Boulle with a subpoena and it has become apparent that he is intentionally evading service. We will do whatever is necessary to secure Mr. Boulle's attendance at the testimony deposition, noticed for March 3, 2009, including bringing the matter to the attention of a federal district judge if necessary.

Dennis Griggs, Esq.
February 4, 2009
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As there has already been an inordinate amount of wasteful motion practice in this proceeding, we are writing in an attempt to avoid further unnecessary and costly motion practice. Accordingly, please let me know by the close of business Friday, February 6, 2009 whether you will accept service of the subpoena on Mr. Boule. In the absence of a timely and affirmative response, we shall proceed accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Darren W. Saunders", with a stylized flourish at the end.

Darren W. Saunders

c: Pieter Tredoux (via email only)